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***Counsel for Defendants***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

2-WAY COMPUTING, INC. a Nevada  
corporation,

Plaintiff,

v.

SPRINT SOLUTIONS, INC., a Delaware  
corporation; NEXTEL FINANCE COMPANY,  
a Delaware corporation; SPRINT UNITED  
MANAGEMENT COMPANY, a Kansas  
corporation; NEXTEL OF CALIFORNIA, INC.,  
a Delaware corporation; NEXTEL BOOST OF  
CALIFORNIA, LLC, a Delaware limited  
liability company, and NEXTEL  
COMMUNICATIONS, INC., a Delaware  
corporation,

Defendants.

**AND RELATED COUNTERCLAIM**

Case No. 2:11-cv-00012-JCM-PAL

**DEFENDANTS' UNOPPOSED  
MOTION FOR LEAVE TO FILE  
UNDER SEAL**

Pursuant to Local Rule 10-5 and Paragraph 9 of the Stipulated Protective Order, Dkt. 39, Defendants Sprint Solutions, Inc., Nextel Finance Company, Sprint United Management Company, Nextel of California, Inc., Nextel Boost of California, LLC, and Nextel Communications, Inc. (collectively, "Sprint") hereby request that Exhibits N, P, Q, and Z, which will be electronically filed under seal contemporaneously with this request, be sealed by this Honorable Court.. This Motion for Leave is based on the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument the Court may entertain. Additionally, counsel for Sprint has conferred with counsel for Plaintiff who indicated that the Plaintiff will not oppose the current Motion.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. INTRODUCTION**

On May 20, 2011, the Court entered the parties' Stipulated Protective Order. *See* Dkt. 39. On May 24, 2012, the Court entered a Stipulation for Amendment to Stipulated Protective Order. *See* Dkt. 99. The Stipulated Protective Order allowed for the production of documents and information that contain technical or business information of a competitive significance. Dkt. 39 at ¶6. The Stipulated Protective Order also protected non-parties that provided confidential documents and/or information in the case. *Id.* at ¶15. Under the protective order, the parties, as well as non-parties such as Motorola Mobility, Motorola Solutions, and Qualcomm, produced documents, provided information during discovery, and permitted the parties to produce information and documents subject to confidentiality restrictions. Much of this information was designated as "Confidential" in accordance with the provisions in the Stipulated Protective Order as the information involved proprietary technical information with respect to the iDEN technology at issue.

Previously in this matter, Sprint filed two Motions for Summary Judgment and replies in support of those Motions. Both of those Motions involved materials that either the parties, or non-parties, deemed "Confidential" under the Stipulated Protective Order, including materials concerning how iDEN, and devices that use iDEN, operate. Thus, under paragraph 9 of the Stipulated Protective Order, Sprint filed a motion to seal certain materials involved in

1 those Motions for Summary Judgment illustrating that “compelling reasons” existed for such  
2 materials to remain under seal. *See* Dkts. 140, 156. The Court granted those Motions. *See*  
3 Dkts. 157, 159. In granting those Motions to Seal, the Court found that “Defendants have  
4 stated compelling reasons for maintaining the confidentiality of documents filed in  
5 connection with their Motions for Summary Judgment.” Dkt. 157 at 2. *See also* Dkt. 159 at  
6 1. Similarly, in granting prior Motion to Seal in conjunction with previous motions *in limine*,  
7 the Court found that the expert report of Michele Riley contains confidential financial  
8 information, and that good cause was shown to seal such information. Dkt. 212 at 2-3.

## 9 **II. LEGAL ARGUMENT AND ANALYSIS**

10 The documents filed under seal should remain sealed because they contain  
11 confidential information and trade secrets regarding the technology at issue. In the case of  
12 dispositive motions, in which similar, if not the same, materials were deemed to remain under  
13 seal by this Court, *see* Dkts. 157, 159, “compelling reasons” must be shown in order to seal  
14 the records. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006).  
15 As described above, the Court found that the “compelling reasons” test was met to maintain  
16 under seal documents relating to the iDEN technology at issue.

17 The information Sprint seeks to maintain under seal here meets the “good cause” and  
18 “compelling reasons” test. Documents relating to the development and operation of iDEN are  
19 clearly proprietary and subject to protection. Another district court, in conjunction with a  
20 theft of trade secrets case involving documents concerning iDEN technology, made specific  
21 findings of fact that the iDEN technology is proprietary and not readily available to the  
22 public. *See U.S. v. Hanjuan Jin*, 833 F. Supp. 2d 977, 982, 991 (N.D. Ill. 2012) (“iDEN is a  
23 proprietary standard for cellular telecommunications technology developed by Motorola  
24 [and] is not publicly accessible.”). Maintaining the confidentiality of such technology is  
25 essential to not only third parties that developed the technology such as Motorola Solutions  
26 and Motorola Mobility, but also the companies that have contracted with these companies to  
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28

1 use the technology and have agreed to maintain its confidentiality, such as Sprint.<sup>1</sup> In fact,  
2 the Court filed its Order on the Motion for Summary Judgment involving the iDEN  
3 technology at issue under seal. *See* Dkt. 160.

4 The exhibits sought to be sealed relate to (1) the functionality of the proprietary iDEN  
5 technology, how iDEN devices that use such technology operate, and the development of the  
6 iDEN technology, and thus should be maintained under seal, and (2) competitive financial  
7 information. The information has been designated as “Confidential” under the Stipulated  
8 Protective Order because the producing party considers the information to be proprietary and  
9 subject to protection. The Court’s prior orders with respect to the Motions to Seal in  
10 conjunction with the Motions for Summary Judgment and previous motions *in limine*, *see*,  
11 *e.g.*, Dkt. 157, 159, 212, as well as the Order from the Northern District of Illinois discussed  
12 above, illustrate that Sprint has made the requisite particularized showing of good cause with  
13 respect to these documents.

14 Due to the confidential, proprietary, and private nature of these documents and  
15 information, public disclosure could result in improper use and could put not only Defendant  
16 Sprint, but also non-parties Motorola Mobility, LLC and Motorola Solutions, Inc. at a  
17 competitive disadvantage in the marketplace. Furthermore, the public has little to no interest  
18 in these documents and information in the context of this patent litigation matter brought by a  
19 non-practicing entity. Considering the information at issue, there is comparatively little value  
20 to the general public in terms of enhancing its “understanding of the judicial process.” *See*  
21 *Kamakana*, 447 F.3d at 1179. Simply put, there is no harm to the public if they do not have  
22 access to the information Sprint seeks to seal. Therefore, this Court should enter an order to  
23 seal the documents and information and not place it on the Court’s docket.

### 24 **III. CONCLUSION**

25 Because exhibits N, P, Q, and Z, attached to the Declaration of Christopher Schenck  
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27 <sup>1</sup> The agreements with these companies contain non-disclosure and confidentiality  
28 obligations.

1 in support of Defendants' Responses in Opposition to 2-Way's *Motions in Limine* contain  
2 confidential information regarding the technology used by Sprint for Push-to-Talk that is at  
3 issue in this lawsuit, and financial information related to the same, and because Plaintiff does  
4 not oppose the current Motion, Sprint respectfully requests that the Court enter an Order that  
5 these materials remain sealed.

6 Dated: August 7, 2015

Respectfully submitted,

7 **KILPATRICK TOWNSEND &**  
8 **STOCKTON LLP**

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***Counsel for Defendants***  
*Sprint Solutions, Inc., Nextel Finance*  
*Company, Sprint United Management*  
*Company, Nextel of California, Inc., Nextel*  
*Boost of California, LLC, and Nextel*  
*Communications, Inc.*

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE UNDER SEAL** by the method indicated:

XXX

by the Court's CM/ECF Program

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by Facsimile Transmission

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by Hand Delivery

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*Counsel for Plaintiff*  
*2-Way Computing, Inc.*

DATED: August 7, 2015

s/Christopher Schenck  
Christopher Schenck (*Pro Hac Vice*)

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2-WAY COMPUTING, Inc. a Nevada corporation,

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SPRINT SOLUTIONS, INC., a Delaware corporation; NEXTEL FINANCE COMPANY, a Delaware corporation; SPRINT UNITED MANAGEMENT COMPANY, a Kansas corporation; NEXTEL OF CALIFORNIA, INC., a Delaware corporation; NEXTEL BOOST OF CALIFORNIA, LLC, a Delaware limited liability company, and NEXTEL COMMUNICATIONS, INC., a Delaware corporation,

Defendants.

**AND RELATED COUNTERCLAIM**

Case No. 2:11-cv-00012-JCM-PAL

**[PROPOSED] ORDER GRANTING  
 DEFENDANTS' UNOPPOSED MOTION  
 FOR LEAVE TO FILE UNDER SEAL**



1 The Court, having reviewed Defendants' Unopposed Motion for Leave to File Under Seal  
2 and good cause appearing, hereby ORDERS that the following documents can be filed under seal:

3 1. Exhibits N, P, Q, and Z to the Consolidated Declaration of Christopher Schenck in  
4 Support of Defendants' Responses in Opposition to 2-Way Computing, Inc.'s Motion *In Limine*.

5  
6 DATED this 19th day of August, 2015.

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8 THE HONORABLE PEGGY A. LEEN  
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